

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT J. PIPER,	§
	§
Defendant Below-	§ No. 689, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0412018249
Plaintiff Below-	§
Appellee.	§

Submitted: April 20, 2010

Decided: June 28, 2010

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 28th day of June 2010, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The Superior Court found the defendant-appellant, Robert Piper (Piper), guilty of his third violation of probation (VOP). The Superior Court sentenced Piper to one year at Level V incarceration, with credit for ten days served, suspended immediately for ten months at the Level IV VOP Center, to be suspended upon successful completion of Level IV. He was discharged as unimproved from any further probation. This is Piper's appeal from that sentence.

(2) Piper's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Piper's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Piper's attorney informed him of the provisions of Rule 26(c) and provided Piper with a copy of the motion to withdraw and the accompanying brief. Piper also was informed of his right to supplement his attorney's presentation. Piper has raised two issues for this Court's consideration. The State has responded to Piper's issues, as well as to the position taken by Piper's counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

¹ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) Piper appears to claim that it was error for him to appear at the VOP hearing before any judge other than his original sentencing judge. Piper also contends that the sentencing judge was unprofessional when he threatened Piper by saying he was going to punish him. Neither claim has any merit.

(5) A probationer is entitled to a prompt hearing before a judge of the Superior Court on a VOP charge.² A probationer is not entitled, however, “to a hearing before a specific judge.”³ We, therefore, reject Piper’s first claim on appeal.

(6) Piper next contends that the Superior Court judge was unprofessional because he “threatened” Piper. Piper does not point to any specific comments, however, which he claims were threatening. Having reviewed the transcript of the VOP hearing, we find nothing even arguably inappropriate or unprofessional in the judge’s colloquy. The judge merely reviewed the VOP allegations and Piper’s prior criminal history before pronouncing his sentence. Accordingly, we reject Piper’s second argument as being unsupported by the record.

² Del. Super. Ct. Crim. R. 32.1(a).

³ *Mayfield v. State*, 2003 WL 1711946 (Del. Mar. 28, 2003).

(7) This Court has reviewed the record carefully and has concluded that Piper's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Piper's counsel has made a conscientious effort to examine the record and the law and has properly determined that Piper could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice